

Application No. 10/797,983

**Amendments to the Claims:**

This listing of claims will replace all prior versions, and listings, of claims in the application:

**Listing of Claims:**

Claims 1-6 (cancelled)

7. (currently amended): A yeast culture ~~and capsaisin composition inoculum for use in a capsaisin fermentation medium~~ for the preparation of a topical pain treatment ~~initially~~ comprising:

a fermentation mixture comprising:

a yeast culture;

a *Capsicum* sp. cultivar in water; and

a yeast; and

a nutrient mixture[.]; and

an oil, said fermentation mixture layered on said oil to receive capsaisin and volatile fermentation byproducts from said fermentation mixture, and said oil receiving and holding said capsaisin and volatile fermentation byproducts;

said oil applicable as a topical pain treatment.

8. (currently amended): The inoculum of claim 7 ~~wherein said *Capsicum* sp. cultivar comprises 1 part *Capsicum* sp. cultivar to an amount of between approximately 1 and approximately 120 parts water~~ further comprising a carbohydrate.

9 - 19. (cancelled)

20. (currently amended): The ~~fermentation medium composition~~ of claim [19] further comprising a second nutrient mixture comprising at least one member selected from the group consisting of calcium, magnesium, iron, zinc and a combination thereof.

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21. (currently amended): The ~~fermentation medium~~ composition of claim 20 wherein said second nutrient mixture comprises an amount of between approximately 0.001% and approximately 0.01% by weight.

22. (currently amended): The ~~fermentation medium~~ composition of claim [19] 7 further comprising a micronutrient mixture.

23. (currently amended): The ~~fermentation medium~~ composition of claim 22 wherein said micronutrient mixture comprises an amount of between approximately 0.0001% and approximately 0.01% by weight.

24. (currently amended): The ~~fermentation medium~~ composition of claim [19] 7 wherein said *Capsicum sp.* cultivar comprises 1 part *Capsicum sp.* cultivar to an amount of between approximately 1 and approximately 120 parts water.

25. (currently amended): The ~~fermentation medium~~ composition of claim 24 wherein said *Capsicum sp.* cultivar comprises 1 part *Capsicum sp.* cultivar to an amount of between approximately 2 and approximately 50 parts water.

26. (currently amended): The ~~fermentation medium~~ composition of claim 25 wherein said *Capsicum sp.* cultivar comprises 1 part *Capsicum sp.* cultivar to an amount of between approximately 5 and approximately 10 parts water.

27. (currently amended): The ~~fermentation medium~~ composition of claim [19] 8 wherein said carbohydrate ~~comprise~~ comprises an amount of between approximately 1% and approximately 40% by weight.

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28. (currently amended): The ~~fermentation medium composition~~ of claim 27 wherein said carbohydrate ~~comprise~~ comprises an amount of between approximately 5% and approximately 20% by weight.

29. (currently amended): The ~~fermentation medium composition~~ of claim 28 wherein said carbohydrate ~~comprise~~ comprises an amount of between approximately 10% and approximately 15% by weight.

30. (currently amended): The ~~fermentation medium composition~~ of claim [19] 7 wherein said yeast culture ~~inoculum~~ comprises an amount of between approximately 0.11% and approximately 50% by volume.

31. (currently amended): The ~~fermentation medium composition~~ of claim 30 wherein said yeast culture ~~inoculum~~ comprises an amount of between approximately 1% and approximately 20% by volume.

32. (currently amended): The ~~fermentation medium composition~~ of claim 31 wherein said yeast culture ~~inoculum~~ comprises an amount of between approximately 5% and approximately 10% by volume.

33. (currently amended): The ~~fermentation medium composition~~ of claim [19] 7 wherein said nutrient mixture comprises an amount of between approximately 0.1% and approximately 10% by volume.

34. (currently amended): The ~~fermentation medium composition~~ of claim 33 wherein said nutrient mixture comprises an amount of between approximately 1% and approximately 5% by volume.

35. (withdrawn): The fermentation medium of claim 19 wherein said nutrient mixture comprises nitrogen, phosphorus and potassium.

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36. (withdrawn): The fermentation medium of claim 35 comprises approximately 20-20-20 nitrogen-phosphorus-potassium.

37. (currently amended): The ~~fermentation medium~~ composition of claim 19 [7] wherein said *Capsicum sp.* comprises *Capsicum chinense*.

Claims 38-82 (Cancelled)

83. (currently amended): The ~~method~~ composition of claim [37] 7 wherein ~~the step of blending the extract into the oil comprises blending one part of the fermentation extract into an amount of a ratio of said~~ *Capsicum sp.* cultivar to said oil is of one part *Capsicum sp.* cultivar to from between approximately 5 parts and approximately 10,000 parts of the said oil.

84. (previously presented): The inoculum of claim 7 wherein said nutrient mixture comprises nitrogen.

85. (withdrawn): The inoculum of claim 7 wherein said nutrient mixture comprises phosphorus.

86. (withdrawn): The inoculum of claim 7 wherein said nutrient mixture comprises potassium.

87. (previously presented): The medium of claim 19 wherein said nutrient mixture comprises nitrogen.

88. (withdrawn): The medium of claim 19 wherein said nutrient mixture comprises phosphorus.

89. (withdrawn): The medium of claim 19 wherein said nutrient mixture comprises potassium.

90. (withdrawn): The medium of claim 19 further comprising manganese.

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91. (withdrawn): The medium of claim 19 further comprising cobalt.

92. (withdrawn): The medium of claim 19 further comprising copper.